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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,615	10/13/2000	Richard A. Esser	04350.0012-00000	8050

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/28/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/689,615

Applicant(s)

ESSER, RICHARD A.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 13 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) 22-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13, 20, 21 and 29-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

In view of the Appeal Brief filed on June 25, 2003, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claims 22-28 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 3.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Choi and Zeigler ('980) (Zeigler 1).

Choi discloses a portable containment device comprising a frame moveable between a closed configuration (see Fig. 3) and an open configuration (see Fig. 2), the frame comprises a plurality of rods (eight bars 510), a plurality of first hubs (a pair of vertically adjacent sliders

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520), each first hub receiving first ends of at least two respective rods, wherein each respective rod is pivotable with respect to the first hub about a distinct axis, a plurality of second hubs (a different pair of vertically adjacent sliders 520) configured to engage a support surface (ground surface or bag surface), each second hub receiving second ends of at least two respective rods, wherein each respective rod is pivotable with respect to the second hub about a distinct axis, and a receptacle (vinyl bag 100) comprising a plurality of attachment portions (the upper corner portions of the bag including an outer surface of a non-folded-over portion and the inner surface of a folded over portion which are directly secured to rods 310 which are connected to the sliders) secured to respective first hubs.

Zeigler 1 discloses a portable containment device (a containment device can form a canopy over an object and thus contain objects which are lighter than air such as helium filled balloons or smoke which float upwardly and become trapped by the ceiling and side walls of the canopy or can form a reservoir for objects heavier than air such as liquid which falls downwardly due to gravity and becomes trapped by the bottom wall and side walls of a reservoir)(the canopy structure 200 disclosed can be oriented upright or can be inverted up-side-down and used as a reservoir) comprising: a frame (210) moveable between a closed configuration (see Fig. 1B) and an open configuration (see Fig. 1A) in which the frame forms a plurality of walls (rods extending along the sides of the canopy form four walls, see Fig. 1A) defining a central space, the frame comprises: a plurality of rods (arm members 246, 248, 252, 254), wherein the intermediate portion of each rod is pivotably connected to the intermediate portion of another rod (by pivot 236)(rod 246 pivotably connected to rod 248 and rod 252 pivotably connected to rod 254), a plurality of second hubs (any of a pair of vertically adjacent hubs which are not the first

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hubs) configured to engage a support surface, each second hub receiving second ends of at least two respective rods, wherein each respective rod is pivotable with respect to the second hub about a distinct axis and a receptacle (flexible canopy 212) comprising a plurality of attachment portions (cover buttons) secured to the respective first hubs, the receptacle forms a containment volume in the central space when the frame is in the open configuration.

Furthermore, one having ordinary skill in the art of overhead canopies would appreciate that such canopies are often erected in an inverted orientation, then reoriented in an upright fashion to provide a canopy.

Claims 1-9, 20, 21, 29-31, 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Zeigler ('946) (Zeigler 2).

Zeigler 2 discloses a portable shelter assembly as shown in Fig. 1A-1D, the assembly has a collapsible framework as shown in erected and open formation in Fig. 2B and 2C and a collapsed formation as shown in Fig. 2A. The portable shelter assembly is inherently capable of performing as a rapid deploy containment device adapted to receive and retain hazardous waste either in its upright configuration forming a ceiling and side walls wherein hazardous smoke and other lighter than air chemicals can be contained or in an inverted (turned up-side-down) configuration forming a reservoir with a bottom and side walls wherein hazardous liquids and other heavier than air chemicals can be contained. The assembly includes rods (struts) and hubs and a canopy attached to the hubs, the rods are joined by a scissors connection intermediate their ends, the rods are connected at their ends to the hubs, each end portion pivoting along separate axes of revolution in relation to the hub, each end portion being rotatable about its axis of revolution from the closed compact configuration, where all the rods are parallel, to an erect

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open configuration, the containment device articulating about three axes, whereby the containment device collapses between the compact and open configurations in height, length and width. The hubs positioned proximate the top of the collapsed configuration descend downwardly towards the bottom portion of the containment device when converting from the collapsed configuration to the erect configuration.

Furthermore, one having ordinary skill in the art of overhead canopies would appreciate that such canopies are often erected in an inverted orientation, then reoriented in an upright fashion to provide a canopy.

Claims 1-9, 20, 21, 29-31, 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Esser et al. (Esser).

Esser discloses a quick erect shelter apparatus as shown in Fig. 1, the assembly has a collapsible framework as shown in erected and open formation in Fig. 2a and 8a. The quick erect shelter apparatus is inherently capable of performing as a rapid deploy containment device adapted to receive and retain hazardous waste either in its upright configuration forming a ceiling and side walls wherein hazardous smoke and other lighter than air chemicals can be contained or in an inverted (turned up-side-down) configuration forming a reservoir with a bottom and side walls wherein hazardous liquids and other heavier than air chemicals can be contained. The assembly includes rods and hubs and a canopy attached to the hubs, the rods are joined by a scissors connection intermediate their ends, the rods are connected at their ends to the hubs, each end portion pivoting along separate axes of revolution in relation to the hub, each end portion being rotatable about its axis of revolution from the closed compact configuration, where all the rods are parallel, to an erect open configuration, the containment device articulating about three

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axes, whereby the containment device collapses between the compact and open configurations in height, length and width. The hubs positioned proximate the top of the collapsed configuration descend downwardly towards the bottom portion of the containment device when converting from the collapsed configuration to the erect configuration.

Furthermore, one having ordinary skill in the art of overhead canopies would appreciate that such canopies are often erected in an inverted orientation, then reoriented in an upright fashion to provide a canopy.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 20, 21, 29-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeigler ('946) (Zeigler 2).

This rejection is being made in the event that the 102 rejection is not sustained.

Zeigler 2 discloses a portable shelter assembly as shown in Fig. 1A-1D, the assembly has a collapsible framework as shown in erected and open formation in Fig. 2B and 2C and a collapsed formation as shown in Fig. 2A. Zeigler 2 discloses the invention except for the device forms a canopy with an open bottom rather than a containment device that is open at the top. It would have been obvious to invert (turn up-side-down) the portable shelter assembly in order to form a containment device that can be rapidly deployed so that a container could be provided to hold items. The assembly includes rods (struts) and hubs and a canopy attached to the hubs, the rods are joined by a scissors connection intermediate their ends, the rods are connected at their

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ends to the hubs, each end portion pivoting along separate axes of revolution in relation to the hub, each end portion being rotatable about its axis of revolution from the closed compact configuration, where all the rods are parallel, to an erect open configuration, the containment device articulating about three axes, whereby the containment device collapses between the compact and open configurations in height, length and width. The hubs positioned proximate the top of the collapsed configuration descend downwardly towards the bottom portion of the containment device when converting from the collapsed configuration to the erect configuration.

Claims 1-9, 20, 21, 29-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser et al. (Esser).

This rejection is being made in the event that the 102 rejection is not sustained.

Esser discloses a quick erect shelter apparatus as shown in Fig. 1, the assembly has a collapsible framework as shown in erected and open formation in Fig. 2a and 8a. Esser discloses the invention except for the device forms a canopy with an open bottom rather than a containment device which is open at the top. It would have been obvious to invert (turn up-side-down) the quick erect shelter apparatus in order to form a containment device that can be rapidly deployed so that a container could be provided to hold items. The assembly includes rods and hubs and a canopy attached to the hubs, the rods are joined by a scissors connection intermediate their ends, the rods are connected at their ends to the hubs, each end portion pivoting along separate axes of revolution in relation to the hub, each end portion being rotatable about its axis of revolution from the closed compact configuration, where all the rods are parallel, to an erect open configuration, the containment device articulating about three axes, whereby the containment device collapses between the compact and open configurations in height, length and

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width. The hubs positioned proximate the top of the collapsed configuration descend downwardly towards the bottom portion of the containment device when converting from the collapsed configuration to the erect configuration.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zeigler in view of Lobbert.

Zeigler discloses the invention except for the liner positioned in the receptacle adjacent the canopy. Lobbert teaches a device for collecting waste wherein a container (7) on the interior of a device is lined by a removable liner (18). It would have been obvious to add a liner adjacent to the interior of the canopy in order to more easily remove waste from a device that has a part for receiving waste products which is more permanently connected than a removable liner laid upon the device. The removability is motivated by the convenience in rapidly removing the liner rather than needing to disconnect the canopy from each of the hubs and by constructing a liner of an easily cleanable plastic material which will reduce the accumulation of germs and disease associated with hazardous materials because the liner is the part exposed to contamination not the canopy.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Esser in view of Lobbert.

Esser discloses the invention except for the liner positioned in the receptacle adjacent the canopy. Lobbert teaches a device for collecting waste wherein a container (7) on the interior of a device is lined by a removable liner (18). It would have been obvious to add a liner adjacent to the interior of the canopy in order to more easily remove waste from a device, which has a part for receiving waste products which is more permanently connected than a removable liner laid

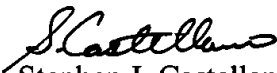
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upon the device. The removability is motivated by the convenience in rapidly removing the liner rather than needing to disconnect the canopy from each of the hubs and by constructing a liner of an easily cleanable plastic material which will reduce the accumulation of germs and disease associated with hazardous materials because the liner is the part exposed to contamination not the canopy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
August 27, 2003